

Decision 13-09-029 September 19, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

John S. Davis,

Complainant,

vs.

Southern California Edison Company
(U338E),

Defendant.

Case 12-02-021
(Filed February 29, 2012)

John S. Davis, for himself, complainant.
Janet S. Combs and William Seldeen, Attorneys at Law,
for Southern California Edison Company, defendant.

Decision Denying Petitions for Modification

1. Summary

This decision denies two Petitions for Modification of Decision 13-03-002 by Mr. John S. Davis regarding a transformer in his backyard.

2. Background

Mr. John S. Davis (Mr. Davis) lives at 13336 Rusty Fig Circle in Cerritos. Southern California Edison Company (SCE) currently locates a 75 kilovolt ampere (kVA) transformer on an easement in the backyard of Mr. Davis' property. In 2010, Mr. Davis filed a Complaint (Case (C.) 10-02-024) against SCE seeking to have SCE replace a pad-mounted transformer recently installed in his backyard. Mr. Davis claimed that SCE had replaced a quiet transformer with a

noisier transformer. Decision (D.) 10-09-023 at 4 in that docket stated that the ambient decibel readings outside of Mr. Davis' residence were around 45 decibels (dB) according to both daytime and nighttime surveys. The decision at 4 determined that SCE had replaced the earlier transformer "for the convenience of SCE and inconvenience of Mr. Davis and his family" and (at 5) that "the fact the [new transformer] meets minimum noise standards is irrelevant in this instance." The Commission ordered SCE to replace the transformer with one of two possible new 75 kVA transformers at no cost to Mr. Davis. Both SCE and Mr. Davis agree that SCE did replace the transformer as ordered.

On February 29, 2012, Mr. Davis filed a second Complaint, C.12-02-021. Mr. Davis contended that the new transformer was as unacceptably loud as the transformer which SCE replaced. He claimed that the new transformer emitted approximately 50 dB of sound, thus not providing the relief required per D.10-09-023. In sum, Mr. Davis contended that the level of noise from the transformer was an unacceptable nuisance that eliminated the enjoyment of his property on a quiet cul-de-sac. Mr. Davis sought relief in the form of relocation of the transformer from his backyard to the front municipal parkway by his house.

D.13-03-002 resolved C.12-02-021. That decision found that SCE's replacement of the transformer in Mr. Davis' backyard did not reduce the noise levels below the level necessary to avoid inconvenience to Mr. Davis and his family.¹ The decision found that effective remedial actions included:

- a) installation of absorptive panels at a cost of \$3,000 to \$5,000;

¹ D.13-03-002, Finding of Fact 5.

- b) enclosure of the transformer with either masonry wall or sound absorbing panels at a cost of \$10,000 to \$15,000;
- c) movement of the transformer to the front of Mr. Davis' yard above ground at a cost of \$18,000, plus additional unspecified costs to underground the transformer; and
- d) movement of the transformer to the municipal parkway and undergrounding it at an undetermined cost in excess of the cost to move the transformer to the front of Mr. Davis' yard and underground it there.²

The decision also found that a reduction in noise levels from installation of absorptive panels would lead to the noise level 5 feet away from the transformer reduced to approximately 41 or 42 dB, and the noise level at 10 feet reduced below 40 dB.³ D.13-03-002 concluded that it was reasonable to require SCE to use the lowest cost solution to effectively reduce the noise level in Mr. Davis' backyard below 45 dB, and that the lowest cost solution to provide a reasonable measure of relief for Mr. Davis and his family would be to require SCE to install absorptive panels against the walls of the transformer.⁴ D.13-03-002 thus ordered SCE to install absorptive panels at no cost to Mr. Davis.⁵ Within 90 days of the effective date of the order, SCE was required to file documentation in this docket that it had complied with this order, including documentation of noise levels.⁶

² D.13-03-002, Finding of Fact 6.

³ D.13-03-002, Finding of Fact 7.

⁴ D.13-03-002, Conclusions of Law 5 and 6.

⁵ D.13-03-002, Ordering Paragraph 2.

⁶ D.13-03-002, Ordering Paragraph 4.

On May 22, 2013, SCE filed its documentation of compliance with D.13-03-002. SCE indicated that it had installed (through a contractor) absorptive panels temporarily pending a sound test on May 8, 2013 and permanently after the sound test on May 14, 2013. SCE also submitted noise measurements from the sound test indicating minimum noise levels of 40.5 dBA and average noise levels of 43.6 dBA at a distance of five feet from the transformer, after installation of the absorptive panels. Maximum noise levels were measured at less than 45.0 dBA. By comparison, SCE indicated that at a distance of five feet from the transformer minimum noise levels without the absorptive panels was 43.6 dBA and average noise levels without the absorptive panels was 52.7 dBA. At a side yard, with no transformer noise audible, the average sound levels were 45.9 dBA, which is actually higher than the measured levels five feet from the transformer.

3. Petitions for Modification

Mr. Davis filed two Petitions for Modification of D.13-03-002, the first on March 18, 2013 (first Petition) and the second on May 30, 2013 (second Petition). The second Petition was amended on June 5, 2013. The first Petition seeks: 1) that SCE obtain a supplemental Grant of Easement to include the cinder block walls, a mutual fence, on the property line, or that SCE construct appurtenant fixtures on its easement on which to install absorptive panels; and 2) that SCE inspect, maintain, repair, replace and remove, as necessary, the absorptive panels and cinder block walls as property held as an easement by SCE until the Grant of Easement is terminated or becomes without force or effect.

SCE filed a response to the first Petition on April 16, 2013 and a response to the amended second Petition on June 14, 2013. SCE opposes both Petitions.

Regarding the first Petition, SCE argues that Mr. Davis' request for an easement is based on a fundamental misunderstanding of easements, as there is no such thing as an "easement" to a wall. SCE states that it had already obtained

Mr. Davis' written authorization for the panels to be installed on the walls. In addition, SCE argues that an easement is unnecessary because, while the Decision ordered SCE to install the panels on Mr. Davis' property, it did not give SCE the right to install its equipment on Mr. Davis' property over his objections. Thus, SCE contends the panels belong to Mr. Davis and he can do with them as he wishes (including removing them after they are installed) without permission from SCE.

Regarding Mr. Davis' request that SCE build "appurtenant fixtures" on which to install the panels, SCE argues that constructing new fixtures would add to the cost due to the construction of the fixtures, and would render the custom ordered panels useless, requiring different panels to be purchased and installed which are more likely to vibrate, potentially reducing their ability to absorb sound. SCE claims the proposed modifications (either obtaining and recording a new easement or building a new structure and discarding the custom panels) have not been estimated but would likely exceed the reasonable costs of relief by an order of magnitude and would not improve (and would possibly worsen) noise reduction. SCE opposes Mr. Davis' request to require SCE to inspect, maintain, repair, replace and remove the absorptive panels indefinitely because a) SCE's contractor installing the panels indicates that the industrial panels have no moving parts, do not require maintenance, and are expected to last up to twenty years or more; and b) the proposed modifications would impose vague, broad and never-ending obligations on SCE.

With permission from the Administrative Law Judge (ALJ), Mr. Davis filed a reply to SCE's response to the first Petition on April 22, 2013. He contends that the absorptive panels cannot be his property because he did not purchase them and SCE was not ordered to present the panels to him as a gift. Further, he

argues that the panels may not provide the required relief, and the proper remedy is to relocate the transformer to the front parkway of the property.

The amended second Petition questions the validity of the SCE noise level measurements. The amended second Petition asks: 1) that SCE remove the transformer from Mr. Davis' backyard and install a sub-surface transformer in the front municipal parkway employing horizontal drilling equipment so as not to damage or otherwise adversely impact any and all landscape or surface structures; and 2) that SCE remove the absorptive panels from Mr. Davis' property and replace all damaged cinder blocks in the fence. Mr. Davis provides documentation from Veneklason Associates who, on May 17, 2013, also measured noise levels in Mr. Davis' yard. Data from the Veneklason Associates measurements show noise levels of between 42.0 and 42.6 dBA at a distance of five feet from the transformer. Mr. Davis provides information from Veneklason Associates that indicate noise levels of between 46.6 dBA and 48.6 dBA at a distance of one foot from the transformer.

Regarding the amended second Petition, SCE contends that measurements submitted by both SCE and Veneklason Associates at multiple locations at 5 feet from the transformer both in the morning and afternoon confirm that transformer noise levels comply with D.13-03-024.

With permission from the Administrative Law Judge (ALJ), Mr. Davis filed a reply to SCE's response to the amended second Petition on June 26, 2013. Mr. Davis argues that, in addition to their being too much noise one foot from the transformer, the absorptive panels are unsightly and constitute an aesthetic nuisance, thereby reducing the enjoyment of his property.

4. Discussion

We will consider the two Petitions together.

SCE has submitted documentation that it has provided for timely installation of the absorptive panels required by D.13-03-002. Mr. Davis agreed to this installation on his property and does not dispute that the panels are in place. Mr. Davis owns the property and, as such, owns the absorptive panels on his property. There is no need to grant SCE an easement for items on Mr. Davis' property. Mr. Davis may choose to remove or move the panels on his property, so long as his actions do not interfere with the operation of SCE equipment; the only reason the panels were ordered to be placed in Mr. Davis' yard was to mitigate his noise problem.

Noise levels as measured by both SCE and Veneklason Associates are now well below 45 dBA at a distance of five feet from the transformer. D.13-03-002 ordered that SCE effectively reduce the noise level in Mr. Davis' backyard below 45 dBA and anticipated that such noise levels would be achieved at a distance of five feet and further from the transformer. SCE has shown that the current noise levels at distances of five feet and beyond from Mr. Davis' transformer are lower than before absorptive panels were installed, and are at or below the levels anticipated by D.13-03-002. SCE's measurements have been confirmed by independent measurements by Veneklason Associates.

Measurements taken by Veneklason Associates that noise levels at one foot from the transformer are above 45 dBA are not relevant. D.13-03-002 ordered that SCE effectively reduce the noise level in Mr. Davis' backyard below 45 dBA, but specifically anticipated that such noise levels would be achieved five feet and further from the transformer.

SCE contends that the panels are expected to last approximately 20 years; Mr. Davis has not provided any evidence to the contrary. While SCE is required to maintain the transformer and all of its equipment or facilities, there is no

rationale to require SCE to maintain panels it does not own and which are located on Mr. Davis' property. The intent of D.13-03-002 was to provide the lowest cost reasonable method of relief to Mr. Davis, not to impose significant and undefined ongoing costs on SCE and its ratepayers. The intent of D.13-03-002 has been satisfied.

In summary, the only relevant new facts presented in either Petition involve a) SCE's timely installation of panels near Mr. Davis' transformer with his permission, and b) noise measurements taken five feet from the transformer after installation of such panels. None of these facts are in dispute. The new facts show that SCE complied with D.13-03-002 and the installed panels have provided the relief required by D.13-03-002. Mr. Davis' requests for additional action on SCE's part have either been addressed previously or are not necessary or appropriate. No further relief is required.

The Petitions are denied.

5. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on September 9, 2013 by SCE in support of the proposed decision. No comments were filed by Mr. Davis.

6. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and David M. Gamson is the assigned ALJ in this proceeding.

Findings of Fact

1. D.13-03-002 required SCE to install absorptive panels against the walls of Mr. Davis' transformer at no cost to Mr. Davis, so that the noise level five feet and further from the transformer would be lower than 45 decibels. SCE installed

such panels on May 8, 2013 on Mr. Davis' property with permission from Mr. Davis.

2. Within 90 days of the effective date of D.13-03-002, SCE was required to file documentation in this docket that it had complied with this order, including documentation of noise levels. SCE filed such documentation on May 22, 2013.

3. Noise levels at a distance of five feet from Mr. Davis' transformer are less than 45 dBA.

Conclusions of Law

1. SCE has complied with D.13-03-002.
2. There are no new facts or circumstances to justify modification of D.13-03-002.

O R D E R

IT IS ORDERED that:

1. The March 18, 2013 and May 30, 2013 (as amended on June 5, 2013) Petitions for Modification of John S. Davis are denied.
2. Case 12-02-021 is closed.

This order is effective today.

Dated September 19, 2013, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
CARLA J. PETERMAN
Commissioners